



February 13, 2015

HOUSE BILL No. 1298

DIGEST OF HB 1298 (Updated February 11, 2015 2:53 pm - DI 55)

Citations Affected: IC 8-5; IC 22-3; IC 27-1; IC 27-6; IC 27-7; IC 27-8; IC 34-13.

Synopsis: Political subdivision risk management. Requires the Indiana Public Employer's Plan, Inc., (IPEP), which was established as a domestic nonprofit corporation, to apply for a certificate of authority to transact business as a domestic mutual insurance company. Provides that, upon receiving the certificate of authority and beginning to transact business as a domestic mutual insurance company, the domestic mutual insurance company into which IPEP has transformed succeeds to all powers, duties, agreements, and liabilities of the former domestic nonprofit corporation. Provides that, on January 1, 2016, (unless IPEP has failed to begin operating as a mutual insurance company under a certificate of authority issued by the insurance commissioner by that date) all powers, duties, agreements, and liabilities of the political subdivision risk management commission are transferred to the domestic mutual insurance company into which IPEP has transformed. Repeals the laws establishing the political subdivision risk management commission, the political subdivision risk management fund, and the political subdivision catastrophic liability fund. Requires the auditor of state to transfer the balances of the political subdivision risk management fund and the political subdivision catastrophic liability fund to the domestic mutual insurance company into which IPEP has transformed. Makes conforming amendments.

Effective: July 1, 2015.

Torr, Karickhoff, VanNatter

January 13, 2015, read first time and referred to Committee on Insurance.
February 12, 2015, amended, reported — Do Pass.

HB 1298—LS 7401/DI 51



February 13, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1298

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-5-15-24 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 24. (a) Before January
3 1 of each year, the district shall certify to the Indiana department of
4 transportation that the district has taken action to provide financial
5 responsibility against liability of the district under any agreement with
6 a commuter transportation system.
7 (b) Proof of financial responsibility under this section may be
8 established by proof that:
9 (1) a liability insurance policy is in force; or
10 (2) a self-insurance program is in effect.
11 (c) ~~The district shall participate, if feasible, in the programs~~
12 ~~established by the political subdivision risk management commission~~
13 ~~under IC 27-1-29.~~
14 SECTION 2. IC 22-3-6-2 IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) For the purpose of complying

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1 with IC 22-3-5-1, groups of employers are hereby authorized to form
2 mutual insurance associations or reciprocal or interinsurance
3 exchanges subject to such reasonable conditions and restrictions as
4 may be fixed by the department of insurance.

5 (b) Membership in such mutual insurance associations or reciprocal
6 or interinsurance exchanges so approved, together with evidence of the
7 payment of premiums due, shall be evidence of compliance with
8 IC 22-3-5-1.

9 (c) Subsection (a) does not apply to mutual insurance associations
10 and reciprocal or interinsurance exchanges formed and operating on or
11 before January 1, 1991, which shall continue to operate subject to the
12 provisions of IC 22-3-2 through IC 22-3-6 and to such reasonable
13 conditions and restrictions as may be fixed by the worker's
14 compensation board.

15 SECTION 3. IC 22-3-7-34, AS AMENDED BY P.L.1-2006,
16 SECTION 343, IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2015]: Sec. 34. (a) As used in this section,
18 "person" does not include:

19 (1) an owner who contracts for performance of work on the
20 owner's owner occupied residential property; or

21 (2) a nonprofit corporation that is recognized as tax exempt under
22 Section 501(c)(3) of the Internal Revenue Code (as defined in
23 IC 6-3-1-11(a)) to the extent the corporation enters into an
24 independent contractor agreement with a person for the
25 performance of youth coaching services on a part-time basis.

26 (b) Every employer bound by the compensation provisions of this
27 chapter, except the state, counties, townships, cities, towns, school
28 cities, school towns, school townships, other municipal corporations,
29 state institutions, state boards, and state commissions, shall insure the
30 payment of compensation to the employer's employees and their
31 dependents in the manner provided in this chapter, or procure from the
32 worker's compensation board a certificate authorizing the employer to
33 carry such risk without insurance. While that insurance or certificate
34 remains in force, the employer, or those conducting the employer's
35 business, and the employer's occupational disease insurance carrier
36 shall be liable to any employee and the employee's dependents for
37 disablement or death from occupational disease arising out of and in
38 the course of employment only to the extent and in the manner
39 specified in this chapter.

40 (c) Every employer who, by election, is bound by the compensation
41 provisions of this chapter, except those exempted from the provisions
42 by subsection (b), shall:



(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(d) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection (c) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting attorney of the county shall prosecute all violations upon written request of the board. The violations shall be prosecuted in the name of the state.

(e) Whenever an employer has complied with subsection (c) relating to self-insurance, the worker's compensation board shall issue to the employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least thirty (30) days notice, and a hearing to the employer, revoke the certificate, upon presentation of satisfactory evidence for the revocation. After the revocation, the board may grant a new certificate to the employer upon the employer's petition, and satisfactory proof of the employer's financial ability.

(f)(1) Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this chapter. A substitute system may not be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this chapter. It may not be approved if it requires contributions from the employees unless it confers benefits in addition to those provided under this chapter, which are at least commensurate with such contributions.

(f)(2) The substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties, if it appears that the same is not fairly administered or if its



operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter. On termination, the board shall determine the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

(g)(1) No insurer shall enter into or issue any policy of insurance under this chapter until its policy form has been submitted to and approved by the worker's compensation board. The board shall not approve the policy form of any insurance company until the company shall file with it the certificate of the insurance commissioner showing that the company is authorized to transact the business of worker's compensation insurance in Indiana. The filing of a policy form by any insurance company or reciprocal insurance association with the board for approval constitutes on the part of the company or association a conclusive and unqualified acceptance of each of the compensation provisions of this chapter, and an agreement by it to be bound by the compensation provisions of this chapter.

(g)(2) All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

(g)(3) Any provision in any such policy attempting to limit or modify the liability of the company or association insuring the same shall be wholly void.

(g)(4) Every policy of any company or association shall be deemed to include the following provisions:

"(A) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under this chapter.

(B) This policy is subject to the provisions of this chapter relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for such employees, the acceptance of such liability by the insured, the adjustment, trial and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits.

(C) Between this insurer and the employee, notice to or knowledge of the occurrence of the disablement on the part of the



1 insured (the employer) shall be notice or knowledge thereof, on
2 the part of the insurer. The jurisdiction of the insured (the
3 employer) for the purpose of this chapter is the jurisdiction of this
4 insurer, and this insurer shall in all things be bound by and shall
5 be subject to the awards, judgments and decrees rendered against
6 the insured (the employer) under this chapter.

7 (D) This insurer will promptly pay to the person entitled to the
8 same all benefits conferred by this chapter, including all
9 physician's fees, nurse's charges, hospital services, hospital
10 supplies, burial expenses, and all installments of compensation or
11 death benefits that may be awarded or agreed upon under this
12 chapter. The obligation of this insurer shall not be affected by any
13 default of the insured (the employer) after disablement or by any
14 default in giving of any notice required by this policy, or
15 otherwise. This policy is a direct promise by this insurer to the
16 person entitled to physician's fees, nurse's charges, fees for
17 hospital services, charges for hospital services, charges for
18 hospital supplies, charges for burial, compensation, or death
19 benefits, and shall be enforceable in the name of the person.

20 (E) Any termination of this policy by cancellation shall not be
21 effective as to employees of the insured covered hereby unless at
22 least thirty (30) days prior to the taking effect of such
23 cancellation, a written notice giving the date upon which such
24 termination is to become effective has been received by the
25 worker's compensation board of Indiana at its office in
26 Indianapolis, Indiana.

27 (F) This policy shall automatically expire one (1) year from the
28 effective date of the policy, unless the policy covers a period of
29 three (3) years, in which event, it shall automatically expire three
30 (3) years from the effective date of the policy. The termination
31 either of a one (1) year or a three (3) year policy, is effective as to
32 the employees of the insured covered by the policy."

33 (g)(5) All claims for compensation, nurse's charges, hospital
34 services, hospital supplies, physician's fees, or burial expenses may be
35 made directly against either the employer or the insurer or both, and the
36 award of the worker's compensation board may be made against either
37 the employer or the insurer or both.

38 (g)(6) If any insurer shall fail to pay any final award or judgment
39 (except during the pendency of an appeal) rendered against it, or its
40 insured, or, if it shall fail to comply with this chapter, the worker's
41 compensation board shall revoke the approval of its policy forms, and
42 shall not accept any further proofs of insurance from it until it shall



1 have paid the award or judgment or complied with this chapter, and
2 shall have resubmitted its policy form and received the approval of the
3 policy by the worker's compensation board.

4 (h) No policy of insurance covering the liability of an employer for
5 worker's compensation shall be construed to cover the liability of the
6 employer under this chapter for any occupational disease unless the
7 liability is expressly accepted by the insurance carrier issuing the
8 policy and is endorsed in that policy. The insurance or security in force
9 to cover compensation liability under this chapter shall be separate
10 from the insurance or security under IC 22-3-2 through IC 22-3-6. Any
11 insurance contract covering liability under either part of this article
12 need not cover any liability under the other.

13 (i) For the purpose of complying with subsection (c), groups of
14 employers are authorized to form mutual insurance associations or
15 reciprocal or interinsurance exchanges subject to any reasonable
16 conditions and restrictions fixed by the department of insurance. ~~This~~
17 ~~subsection does not apply to mutual insurance associations and~~
18 ~~reciprocal or interinsurance exchanges formed and operating on or~~
19 ~~before January 1, 1991, which shall continue to operate subject to the~~
20 ~~provisions of this chapter and to such reasonable conditions and~~
21 ~~restrictions as may be fixed by the worker's compensation board.~~

22 (j) Membership in a mutual insurance association or a reciprocal or
23 interinsurance exchange so proved, together with evidence of the
24 payment of premiums due, is evidence of compliance with subsection
25 (c).

26 (k) Any person bound under the compensation provisions of this
27 chapter, contracting for the performance of any work exceeding one
28 thousand dollars (\$1,000) in value, in which the hazard of an
29 occupational disease exists, by a contractor subject to the compensation
30 provisions of this chapter without exacting from the contractor a
31 certificate from the worker's compensation board showing that the
32 contractor has complied with subsections (b), (c), and (d), shall be
33 liable to the same extent as the contractor for compensation, physician's
34 fees, hospital fees, nurse's charges, and burial expenses on account of
35 the injury or death of any employee of such contractor, due to
36 occupational disease arising out of and in the course of the
37 performance of the work covered by such contract.

38 (l) Any contractor who sublets any contract for the performance of
39 any work to a subcontractor subject to the compensation provisions of
40 this chapter, without obtaining a certificate from the worker's
41 compensation board showing that the subcontractor has complied with
42 subsections (b), (c), and (d), is liable to the same extent as the



subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expense on account of the injury or death of any employee of the subcontractor due to occupational disease arising out of and in the course of the performance of the work covered by the subcontract.

(m) A person paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses, under subsection (k) or (l), may recover the amount paid or to be paid from any person who would otherwise have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(n) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection (k), shall fix the order in which such parties shall be exhausted, beginning with the immediate employer and, in an award under subsection (l), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.

SECTION 4. IC 27-1-20-28 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 28. The provisions of this article shall not apply to any interinsurance association or reciprocal or interinsurance exchange organized under and by virtue of Acts 1915, c.106, as amended and supplemented, and formed and operating on or before January 1, 1991, for the sole purpose of writing worker's compensation insurance.~~

SECTION 5. IC 27-1-29-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 29. This chapter expires on the latter of the following dates:**

(1) January 1, 2016.

(2) The date, as certified by the insurance commissioner under IC 27-1-45-6(c), on which:

(A) the Indiana Public Employer's Plan, Inc., begins operating as a domestic mutual insurance company under a certificate of authority issued under IC 27-1-45; and

(B) the powers, rights, duties, assets, and obligations of the political subdivision risk management commission established by IC 27-1-29 are transferred to the Indiana Public Employer's Plan, Inc., under IC 27-1-45.

SECTION 6. IC 27-1-29.1-23 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2015]: **Sec. 23. This chapter expires on the
latter of the following dates:**

(1) January 1, 2016.

(2) The date, as certified by the insurance commissioner under
IC 27-1-45-6(c), on which:

(A) the Indiana Public Employer's Plan, Inc., begins
operating as a domestic mutual insurance company under
a certificate of authority issued under IC 27-1-45; and

(B) the powers, rights, duties, assets, and obligations of the
political subdivision risk management commission
established by IC 27-1-29 are transferred to the Indiana
Public Employer's Plan, Inc., under IC 27-1-45.

SECTION 7. IC 27-1-45 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2015]:

Chapter 45. Political Subdivision Risk Management

Sec. 1. As used in this chapter, "IPEP" refers to the Indiana
Public Employer's Plan, Inc., which was originally incorporated
under the name Indiana Employers' Compensation Plan, Inc. as a
domestic nonprofit corporation on December 11, 1989.

Sec. 2. As used in this chapter, "political subdivision" has the
meaning set forth in IC 34-6-2-110.

Sec. 3. As used in this chapter, "political subdivision risk
management commission" refers to the commission established by
IC 27-1-29 (before its expiration).

Sec. 4. (a) IPEP shall apply to the insurance commissioner for
a certificate of authority to transact business in Indiana as a
domestic mutual insurance company.

(b) The insurance commissioner may not grant the application
for a certificate of authority submitted under subsection (a) unless
the following requirements have been met:

(1) IPEP must submit information ensuring that, as a
domestic mutual insurance company, it will protect the
interests of the political subdivisions and other governmental
entities eligible to participate in:

(A) the political subdivision risk management fund
established by IC 27-1-29-10 (before its expiration); or

(B) the political subdivision risk management catastrophic
fund established by IC 27-1-29.1-7 (before its expiration).

(2) IPEP must submit information ensuring that, as a
domestic mutual insurance company, it will be able to



adequately provide indemnification for liabilities held by the political subdivision risk management commission at the time of IPEP's application, including those liabilities incurred but not reported.

(3) IPEP must submit information ensuring that, as a domestic mutual insurance company, it will continue to offer coverage to political subdivisions in the way contemplated by IC 27-1-29-11 (before its expiration).

(4) The bylaws or articles of incorporation prepared by IPEP for purposes of its transformation into a domestic mutual insurance company must require that:

(A) the board of the domestic mutual insurance company be made up of not fewer than seven (7) persons; and

(B) at least half of the members of the board be representatives of political subdivisions insured by the domestic mutual insurance company.

(5) IPEP, in transforming into a domestic mutual insurance company, must meet the requirements and conditions for the formation of a domestic insurer set forth in IC 27-1-6, including an examination under IC 27-1-6-17.

Sec. 5. (a) After:

(1) receiving a certificate of authority from the insurance commissioner to transact business in Indiana as a domestic mutual insurance company; and

(2) making any changes in structure and legal status necessary or beneficial to the transformation of IPEP from a domestic nonprofit corporation into a domestic mutual insurance company;

IPEP shall begin transacting the business of insurance as a domestic mutual insurance company.

(b) All of the following apply on the date on which IPEP begins transacting the business of insurance as a domestic mutual insurance company:

(1) All powers, duties, agreements, and liabilities that IPEP had as a domestic nonprofit corporation immediately before the date are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity.

(2) All records and property that IPEP had as a domestic nonprofit corporation immediately before the date, including all funds under the control or supervision of IPEP, are transferred to the domestic mutual insurance company into



1 which IPEP has transformed as the successor entity.

2 (3) Any amounts owed to IPEP immediately before the date
3 are considered to be owed to the domestic mutual insurance
4 company into which IPEP has transformed as the successor
5 entity.

6 (4) A reference to IPEP in a statute, rule, or other document
7 is considered a reference to the domestic insurance company
8 into which IPEP has transformed as the successor entity.

9 (5) All powers, duties, agreements, and liabilities of IPEP
10 immediately before the date with respect to bonds issued by
11 IPEP in connection with any trust agreement or indenture
12 securing the bonds are transferred to the domestic mutual
13 insurance company into which IPEP has transformed as the
14 successor entity. The rights of the trustee under any trust
15 agreement or indenture and the rights of the bondholders of
16 IPEP remain unchanged despite the transfer of the powers,
17 duties, agreements, and liabilities of IPEP to the domestic
18 mutual insurance company into which IPEP has transformed
19 as the successor entity.

20 Sec. 6. (a) Subdivisions (b)(1) through (b)(5) apply on the latter
21 of the following dates:

22 (1) January 1, 2016.

23 (2) The date on which IPEP begins transacting the business of
24 insurance as a domestic mutual insurance company under
25 section 5(a) of this chapter.

26 (b) The following apply on the date specified in subsection (a):

27 (1) All powers, duties, agreements, and liabilities of the
28 political subdivision risk management commission are
29 transferred to the domestic mutual insurance company into
30 which IPEP has transformed as the successor entity.

31 (2) All records and property of the political subdivision risk
32 management commission, including appropriations and other
33 funds under the control or supervision of the political
34 subdivision risk management commission, are transferred to
35 the domestic mutual insurance company into which IPEP has
36 transformed as the successor entity.

37 (3) Any amounts owed to the political subdivision risk
38 management commission are considered to be owed to the
39 domestic mutual insurance company into which IPEP has
40 transformed as the successor entity.

41 (4) A reference to the political subdivision risk management
42 commission in a statute, rule, or other document is considered



a reference to the domestic insurance company into which IPEP has transformed as the successor entity.

(5) All powers, duties, agreements, and liabilities of the political subdivision risk management commission with respect to bonds issued by the political subdivision risk management commission in connection with any trust agreement or indenture securing the bonds are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity. The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of the political subdivision risk management commission remain unchanged despite the transfer of the powers, duties, agreements, and liabilities of the political subdivision risk management commission to the domestic mutual insurance company into which IPEP has transformed as the successor entity.

(c) For the purposes of IC 27-1-29-29, IC 27-1-29.1-23, this section, section 7 of this chapter, and IC 34-13-3-8, the insurance commissioner shall certify the date on which:

(1) IPEP begins transacting the business of insurance as a domestic mutual insurance company under section 5(a) of this chapter; and

(2) the powers, rights, duties, assets, and obligations of the political subdivision risk management commission are transferred under this section to the domestic mutual insurance company into which IPEP has transformed.

Sec. 7. The auditor of state shall, not before January 1, 2016, and not later than thirty (30) days after the date certified by the insurance commissioner under section 6(c) of this chapter, transfer the balance of funds in:

(1) the political subdivision risk management fund established by IC 27-1-29-10 (before its expiration); and

(2) the political subdivision risk management catastrophic fund established by IC 27-1-29.1-7 (before its expiration);

to the domestic mutual insurance company into which IPEP has transformed under this chapter.

SECTION 8. IC 27-6-4-1 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 1. Nothing in IC 27-6-6-3, IC 27-6-6-6, or IC 27-6-6-7 shall be construed to annul, restrict, or in any manner interfere with the licensing and supervision of mutual insurance associations and reciprocal associations formed and operating on or before January 1;



1 ~~1991, solely for the writing of worker's compensation insurance as~~
 2 ~~provided under IC 22-3.~~

3 SECTION 9. IC 27-7-2-26 IS REPEALED [EFFECTIVE JULY 1,
 4 2015]. Sec. 26. ~~Nothing in this chapter shall be construed to annul,~~
 5 ~~restrict, or in any manner interfere with the licensing and supervision~~
 6 ~~of mutual insurance associations and reciprocal associations formed~~
 7 ~~and operating on or before January 1, 1991, solely for the writing of~~
 8 ~~worker's compensation insurance as provided under IC 22-3-2 through~~
 9 ~~IC 22-3-6.~~

10 SECTION 10. IC 27-8-8-2, AS AMENDED BY P.L.276-2013,
 11 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2015]: Sec. 2. (a) The definitions in this section apply
 13 throughout this chapter.

14 (b) "Account" means one (1) of the two (2) accounts created under
 15 section 3 of this chapter.

16 (c) "Annuity contract", except as provided in section 2.3(e) of this
 17 chapter, includes:

- 18 (1) a guaranteed investment contract;
- 19 (2) a deposit administration contract;
- 20 (3) a structured settlement annuity;
- 21 (4) an annuity issued to or in connection with a government
- 22 lottery; and
- 23 (5) an immediate or a deferred annuity contract.

24 (d) "Assessment base year" means, for an impaired insurer or
 25 insolvent insurer, the most recent calendar year for which required
 26 premium information is available preceding the calendar year during
 27 which the impaired insurer's or insolvent insurer's coverage date
 28 occurs.

29 (e) "Association", except when the context otherwise requires,
 30 means the Indiana life and health insurance guaranty association
 31 created by section 3 of this chapter.

32 (f) "Benefit plan" means a specific plan, fund, or program that is
 33 established or maintained by an employer or an employee organization,
 34 or both, that:

- 35 (1) provides retirement income to employees; or
- 36 (2) results in a deferral of income by employees for a period
- 37 extending to or beyond the termination of employment.

38 (g) "Board" refers to the board of directors of the association
 39 selected under IC 27-8-8-4.

40 (h) "Called", when used in the context of assessments, means that
 41 notice has been issued by the association to member insurers requiring



the member insurers to pay, within a time frame set forth in the notice, an assessment that has been authorized by the board.

(i) "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(j) "Contractual obligation" means an enforceable obligation under a covered policy for which and to the extent that coverage is provided under section 2.3 of this chapter.

(k) "Coverage date" means, with respect to a member insurer, the date on which the earlier of the following occurs:

(1) The member insurer becomes an insolvent insurer.

(2) The association determines that the association will provide coverage under section 5(a) of this chapter with respect to the member insurer.

(l) "Covered policy" means a:

(1) nongroup policy or contract;

(2) certificate under a group policy or contract; or

(3) part of a policy, contract, or certificate described in subdivisions (1) and (2);

for which coverage is provided under section 2.3 of this chapter.

(m) "Extracontractual claims" includes claims that relate to bad faith in the payment of claims, punitive or exemplary damages, or attorney's fees and costs.

(n) "Funding agreement" has the meaning set forth in IC 27-1-12.7-1.

(o) "Impaired insurer" means a member insurer that is:

(1) not an insolvent insurer; and

(2) placed under an order of rehabilitation or conservation by a court with jurisdiction.

(p) "Insolvent insurer" means a member insurer that is placed under an order of liquidation with a finding of insolvency by a court with jurisdiction.

(q) "Member insurer" means any person that holds a certificate of authority to transact in Indiana any kind of insurance for which coverage is provided under section 2.3 of this chapter. The term includes an insurer whose certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily withdrawn but does not include the following:

(1) A for-profit or nonprofit hospital or medical service organization.

(2) A health maintenance organization under IC 27-13.

(3) A fraternal benefit society under IC 27-11.



- 1 (4) The Indiana Comprehensive Health Insurance Association or
- 2 any other mandatory state pooling plan or arrangement.
- 3 (5) An assessment company or another person that operates on an
- 4 assessment plan (as defined in IC 27-1-2-3(y)).
- 5 (6) An interinsurance or reciprocal exchange authorized by
- 6 IC 27-6-6.
- 7 (7) A prepaid limited service health maintenance organization or
- 8 a limited service health maintenance organization under
- 9 IC 27-13-34.
- 10 (8) A farm mutual insurance company under IC 27-5.1.
- 11 (9) A person operating as a Lloyds under IC 27-7-1.
- 12 (10) The political subdivision risk management fund established
- 13 by IC 27-1-29-10 **(before its expiration)** and the political
- 14 subdivision catastrophic liability fund established by
- 15 IC 27-1-29.1-7 **(before its expiration)**.
- 16 (11) The small employer health reinsurance board established by
- 17 IC 27-8-15.5-5.
- 18 (12) A person similar to any person described in subdivisions (1)
- 19 through (11).
- 20 (r) "Moody's Corporate Bond Yield Average" means:
- 21 (1) the monthly average of the composite yield on seasoned
- 22 corporate bonds as published by Moody's Investors Service, Inc.;
- 23 or
- 24 (2) if the monthly average described in subdivision (1) is no
- 25 longer published, an alternative publication of interest rates or
- 26 yields determined appropriate by the association.
- 27 (s) "Multiple employer welfare arrangement" has the meaning set
- 28 forth in IC 27-1-34-1.
- 29 (t) "Owner" means the person:
- 30 (1) identified as the legal owner of a policy or contract according
- 31 to the terms of the policy or contract; or
- 32 (2) otherwise vested with legal title to a policy or contract through
- 33 a valid assignment completed in accordance with the terms of the
- 34 policy or contract and properly recorded as the owner on the
- 35 books of the insurer.
- 36 The term does not include a person with a mere beneficial interest in
- 37 a policy or contract.
- 38 (u) "Person" means an individual, a corporation, a limited liability
- 39 company, a partnership, an association, a governmental entity, a
- 40 voluntary organization, a trust, a trustee, or another business entity or
- 41 organization.



(v) "Plan sponsor" refers to only one (1) of the following with respect to a benefit plan:

(1) The employer, in the case of a benefit plan established or maintained by a single employer.

(2) The holding company or controlling affiliate, in the case of a benefit plan established or maintained by affiliated companies comprising a consolidated corporation.

(3) The employee organization, in the case of a benefit plan established or maintained by an employee organization.

(4) In a case of a benefit plan established or maintained:

(A) by two (2) or more employers;

(B) by two (2) or more employee organizations; or

(C) jointly by one (1) or more employers and one (1) or more employee organizations;

and that is not of a type described in subdivision (2), the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the benefit plan.

(w) "Premiums" means amounts, deposits, and considerations received on covered policies, less returned premiums, returned deposits, returned considerations, dividends, and experience credits. The term does not include the following:

(1) Amounts, deposits, and considerations received for policies or contracts or parts of policies or contracts for which coverage is not provided under section 2.3(d) of this chapter, as qualified by section 2.3(e) of this chapter, except that an assessable premium must not be reduced on account of the limitations set forth in section 2.3(e)(3), 2.3(e)(15), or 2.3(f)(2) of this chapter.

(2) Premiums in excess of five million dollars (\$5,000,000) on an unallocated annuity contract not issued or not connected with a governmental benefit plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code.

(x) "Principal place of business" refers to the single state in which individuals who establish policy for the direction, control, and coordination of the operations of an entity as a whole primarily exercise the direction, control, and coordination, as determined by the association in the association's reasonable judgment by considering the following factors:

(1) The state in which the primary executive and administrative headquarters of the entity is located.

(2) The state in which the principal office of the chief executive officer of the entity is located.



(3) The state in which the board of directors or similar governing person of the entity conducts the majority of the board of directors' or governing person's meetings.

(4) The state in which the executive or management committee of the board of directors or similar governing person of the entity conducts the majority of the committee's meetings.

(5) The state from which the management of the overall operations of the entity is directed.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are employed in a single state, that state is considered to be the principal place of business of the plan sponsor. The principal place of business of a plan sponsor of a benefit plan described in subsection (v)(4), if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are not employed in a single state, is considered to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the benefit plan and, in the absence of a specific or clear designation of a principal place of business, is considered to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question on the coverage date.

(y) "Receivership court" refers to the court in an insolvent insurer's or impaired insurer's state that has jurisdiction over the conservation, rehabilitation, or liquidation of the insolvent insurer or impaired insurer.

(z) "Resident" means the following:

(1) An individual who resides in Indiana on the applicable coverage date.

(2) A person that is not an individual and has the person's principal place of business in Indiana on the applicable coverage date.

(aa) "State" includes a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(bb) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(cc) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.



(dd) "Unallocated annuity contract" means an annuity contract or group annuity certificate:

(1) the owner of which is not a natural person; and

(2) that does not identify at least one (1) specific natural person as an annuitant;

except to the extent of any annuity benefits guaranteed to a natural person by an insurer under the contract or certificate. For purposes of this chapter, an unallocated annuity contract shall not be considered a group policy or group contract.

SECTION 11. IC 34-13-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) Except as provided in section 9 of this chapter **and subsection (b), for a loss arising from an act or omission occurring before the date certified by the insurance commissioner under IC 27-1-45-6(c)**, a claim against a political subdivision is barred unless notice is filed with:

(1) the governing body of that political subdivision; and

(2) the Indiana political subdivision risk management commission created under IC 27-1-29 **(before its expiration)**;

within one hundred eighty (180) days after the loss occurs.

(b) **For a loss arising from an act or omission occurring before the date certified by the insurance commissioner under IC 27-1-45-6(c)**, a claim against a political subdivision is not barred for failure to file notice with the Indiana political subdivision risk management commission created under IC 27-1-29-5 **(before its expiration)** if the political subdivision was not a member of the political subdivision risk management fund established under IC 27-1-29-10 **(before its expiration)** at the time the act or omission took place.

(c) Except as provided in section 9 of this chapter and subsection (d), **for a loss arising from an act or omission occurring on or after the date certified by the insurance commissioner under IC 27-1-45-6(c)**, a claim against a political subdivision is barred unless notice is filed with:

(1) the governing body of that political subdivision; and

(2) the domestic mutual insurance company to which the powers, rights, duties, assets, and obligations of the political subdivision risk management commission are transferred under IC 27-1-45;

within one hundred eighty (180) days after the loss occurs.

(d) **For a loss arising from an act or omission occurring on or after the date certified by the insurance commissioner under IC 27-1-45-6(c)**, a claim against a political subdivision is not barred



1 **for failure to file notice with the domestic mutual insurance**
2 **company referred to in subsection (c)(2) if the political subdivision**
3 **was not insured by that domestic mutual insurance company when**
4 **the act or omission took place.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1298, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-5-15-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 24. (a) Before January 1 of each year, the district shall certify to the Indiana department of transportation that the district has taken action to provide financial responsibility against liability of the district under any agreement with a commuter transportation system.

(b) Proof of financial responsibility under this section may be established by proof that:

- (1) a liability insurance policy is in force; or
- (2) a self-insurance program is in effect.

~~(c) The district shall participate, if feasible, in the programs established by the political subdivision risk management commission under IC 27-1-29.~~

SECTION 2. IC 22-3-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) For the purpose of complying with IC 22-3-5-1, groups of employers are hereby authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to such reasonable conditions and restrictions as may be fixed by the department of insurance.

(b) Membership in such mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with IC 22-3-5-1.

~~(c) Subsection (a) does not apply to mutual insurance associations and reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of IC 22-3-2 through IC 22-3-6 and to such reasonable conditions and restrictions as may be fixed by the worker's compensation board.~~

SECTION 3. IC 22-3-7-34, AS AMENDED BY P.L.1-2006, SECTION 343, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 34. (a) As used in this section, "person" does not include:



(1) an owner who contracts for performance of work on the owner's owner occupied residential property; or

(2) a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) Every employer bound by the compensation provisions of this chapter, except the state, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, state institutions, state boards, and state commissions, shall insure the payment of compensation to the employer's employees and their dependents in the manner provided in this chapter, or procure from the worker's compensation board a certificate authorizing the employer to carry such risk without insurance. While that insurance or certificate remains in force, the employer, or those conducting the employer's business, and the employer's occupational disease insurance carrier shall be liable to any employee and the employee's dependents for disablement or death from occupational disease arising out of and in the course of employment only to the extent and in the manner specified in this chapter.

(c) Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection (b), shall:

(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(d) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection (c) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting



attorney of the county shall prosecute all violations upon written request of the board. The violations shall be prosecuted in the name of the state.

(e) Whenever an employer has complied with subsection (c) relating to self-insurance, the worker's compensation board shall issue to the employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least thirty (30) days notice, and a hearing to the employer, revoke the certificate, upon presentation of satisfactory evidence for the revocation. After the revocation, the board may grant a new certificate to the employer upon the employer's petition, and satisfactory proof of the employer's financial ability.

(f)(1) Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this chapter. A substitute system may not be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this chapter. It may not be approved if it requires contributions from the employees unless it confers benefits in addition to those provided under this chapter, which are at least commensurate with such contributions.

(f)(2) The substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties, if it appears that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter. On termination, the board shall determine the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

(g)(1) No insurer shall enter into or issue any policy of insurance under this chapter until its policy form has been submitted to and approved by the worker's compensation board. The board shall not approve the policy form of any insurance company until the company shall file with it the certificate of the insurance commissioner showing that the company is authorized to transact the business of worker's compensation insurance in Indiana. The filing of a policy form by any insurance company or reciprocal insurance association with the board for approval constitutes on the part of the company or association a conclusive and unqualified acceptance of each of the compensation provisions of this chapter, and an agreement by it to be bound by the compensation provisions of this chapter.



(g)(2) All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

(g)(3) Any provision in any such policy attempting to limit or modify the liability of the company or association insuring the same shall be wholly void.

(g)(4) Every policy of any company or association shall be deemed to include the following provisions:

"(A) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under this chapter.

(B) This policy is subject to the provisions of this chapter relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for such employees, the acceptance of such liability by the insured, the adjustment, trial and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits.

(C) Between this insurer and the employee, notice to or knowledge of the occurrence of the disablement on the part of the insured (the employer) shall be notice or knowledge thereof, on the part of the insurer. The jurisdiction of the insured (the employer) for the purpose of this chapter is the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to the awards, judgments and decrees rendered against the insured (the employer) under this chapter.

(D) This insurer will promptly pay to the person entitled to the same all benefits conferred by this chapter, including all physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, and all installments of compensation or death benefits that may be awarded or agreed upon under this chapter. The obligation of this insurer shall not be affected by any default of the insured (the employer) after disablement or by any default in giving of any notice required by this policy, or otherwise. This policy is a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital services, charges for



hospital supplies, charges for burial, compensation, or death benefits, and shall be enforceable in the name of the person.

(E) Any termination of this policy by cancellation shall not be effective as to employees of the insured covered hereby unless at least thirty (30) days prior to the taking effect of such cancellation, a written notice giving the date upon which such termination is to become effective has been received by the worker's compensation board of Indiana at its office in Indianapolis, Indiana.

(F) This policy shall automatically expire one (1) year from the effective date of the policy, unless the policy covers a period of three (3) years, in which event, it shall automatically expire three (3) years from the effective date of the policy. The termination either of a one (1) year or a three (3) year policy, is effective as to the employees of the insured covered by the policy."

(g)(5) All claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the worker's compensation board may be made against either the employer or the insurer or both.

(g)(6) If any insurer shall fail to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail to comply with this chapter, the worker's compensation board shall revoke the approval of its policy forms, and shall not accept any further proofs of insurance from it until it shall have paid the award or judgment or complied with this chapter, and shall have resubmitted its policy form and received the approval of the policy by the worker's compensation board.

(h) No policy of insurance covering the liability of an employer for worker's compensation shall be construed to cover the liability of the employer under this chapter for any occupational disease unless the liability is expressly accepted by the insurance carrier issuing the policy and is endorsed in that policy. The insurance or security in force to cover compensation liability under this chapter shall be separate from the insurance or security under IC 22-3-2 through IC 22-3-6. Any insurance contract covering liability under either part of this article need not cover any liability under the other.

(i) For the purpose of complying with subsection (c), groups of employers are authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to any reasonable conditions and restrictions fixed by the department of insurance. ~~This subsection does not apply to mutual insurance associations and~~



reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of this chapter and to such reasonable conditions and restrictions as may be fixed by the worker's compensation board.

(j) Membership in a mutual insurance association or a reciprocal or interinsurance exchange so proved, together with evidence of the payment of premiums due, is evidence of compliance with subsection (c).

(k) Any person bound under the compensation provisions of this chapter, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value, in which the hazard of an occupational disease exists, by a contractor subject to the compensation provisions of this chapter without exacting from the contractor a certificate from the worker's compensation board showing that the contractor has complied with subsections (b), (c), and (d), shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to occupational disease arising out of and in the course of the performance of the work covered by such contract.

(l) Any contractor who sublets any contract for the performance of any work to a subcontractor subject to the compensation provisions of this chapter, without obtaining a certificate from the worker's compensation board showing that the subcontractor has complied with subsections (b), (c), and (d), is liable to the same extent as the subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expense on account of the injury or death of any employee of the subcontractor due to occupational disease arising out of and in the course of the performance of the work covered by the subcontract.

(m) A person paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses, under subsection (k) or (l), may recover the amount paid or to be paid from any person who would otherwise have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(n) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection (k), shall fix the order in which such parties shall be exhausted, beginning



with the immediate employer and, in an award under subsection (l), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.

SECTION 4. IC 27-1-20-28 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 28. The provisions of this article shall not apply to any interinsurance association or reciprocal or interinsurance exchange organized under and by virtue of Acts 1915, c.106, as amended and supplemented, and formed and operating on or before January 1, 1991, for the sole purpose of writing worker's compensation insurance.~~

SECTION 5. IC 27-1-29-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 29. This chapter expires on the latter of the following dates:**

(1) January 1, 2016.

(2) The date, as certified by the insurance commissioner under IC 27-1-45-6(c), on which:

(A) the Indiana Public Employer's Plan, Inc., begins operating as a domestic mutual insurance company under a certificate of authority issued under IC 27-1-45; and

(B) the powers, rights, duties, assets, and obligations of the political subdivision risk management commission established by IC 27-1-29 are transferred to the Indiana Public Employer's Plan, Inc., under IC 27-1-45.

SECTION 6. IC 27-1-29.1-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 23. This chapter expires on the latter of the following dates:**

(1) January 1, 2016.

(2) The date, as certified by the insurance commissioner under IC 27-1-45-6(c), on which:

(A) the Indiana Public Employer's Plan, Inc., begins operating as a domestic mutual insurance company under a certificate of authority issued under IC 27-1-45; and

(B) the powers, rights, duties, assets, and obligations of the political subdivision risk management commission established by IC 27-1-29 are transferred to the Indiana Public Employer's Plan, Inc., under IC 27-1-45."

Page 1, line 2, delete "UPON".

Page 1, line 3, delete "PASSAGE]:" and insert "JULY 1, 2015]:".

Page 1, line 4, delete "Transfer of Oversight from Worker's" and insert "Political Subdivision Risk Management".



Page 1, delete lines 5 through 15, begin a new paragraph and insert:

"Sec. 1. As used in this chapter, "IPEP" refers to the Indiana Public Employer's Plan, Inc., which was originally incorporated under the name Indiana Employers' Compensation Plan, Inc. as a domestic nonprofit corporation on December 11, 1989.

Sec. 2. As used in this chapter, "political subdivision" has the meaning set forth in IC 34-6-2-110.

Sec. 3. As used in this chapter, "political subdivision risk management commission" refers to the commission established by IC 27-1-29 (before its expiration).

Sec. 4. (a) IPEP shall apply to the insurance commissioner for a certificate of authority to transact business in Indiana as a domestic mutual insurance company.

(b) The insurance commissioner may not grant the application for a certificate of authority submitted under subsection (a) unless the following requirements have been met:

(1) IPEP must submit information ensuring that, as a domestic mutual insurance company, it will protect the interests of the political subdivisions and other governmental entities eligible to participate in:

(A) the political subdivision risk management fund established by IC 27-1-29-10 (before its expiration); or

(B) the political subdivision risk management catastrophic fund established by IC 27-1-29.1-7 (before its expiration).

(2) IPEP must submit information ensuring that, as a domestic mutual insurance company, it will be able to adequately provide indemnification for liabilities held by the political subdivision risk management commission at the time of IPEP's application, including those liabilities incurred but not reported.

(3) IPEP must submit information ensuring that, as a domestic mutual insurance company, it will continue to offer coverage to political subdivisions in the way contemplated by IC 27-1-29-11 (before its expiration).

(4) The bylaws or articles of incorporation prepared by IPEP for purposes of its transformation into a domestic mutual insurance company must require that:

(A) the board of the domestic mutual insurance company be made up of not fewer than seven (7) persons; and

(B) at least half of the members of the board be representatives of political subdivisions insured by the domestic mutual insurance company.



(5) IPEP, in transforming into a domestic mutual insurance company, must meet the requirements and conditions for the formation of a domestic insurer set forth in IC 27-1-6, including an examination under IC 27-1-6-17.

Sec. 5. (a) After:

- (1) receiving a certificate of authority from the insurance commissioner to transact business in Indiana as a domestic mutual insurance company; and**
- (2) making any changes in structure and legal status necessary or beneficial to the transformation of IPEP from a domestic nonprofit corporation into a domestic mutual insurance company;**

IPEP shall begin transacting the business of insurance as a domestic mutual insurance company.

(b) All of the following apply on the date on which IPEP begins transacting the business of insurance as a domestic mutual insurance company:

- (1) All powers, duties, agreements, and liabilities that IPEP had as a domestic nonprofit corporation immediately before the date are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity.**
- (2) All records and property that IPEP had as a domestic nonprofit corporation immediately before the date, including all funds under the control or supervision of IPEP, are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity.**
- (3) Any amounts owed to IPEP immediately before the date are considered to be owed to the domestic mutual insurance company into which IPEP has transformed as the successor entity.**
- (4) A reference to IPEP in a statute, rule, or other document is considered a reference to the domestic insurance company into which IPEP has transformed as the successor entity.**
- (5) All powers, duties, agreements, and liabilities of IPEP immediately before the date with respect to bonds issued by IPEP in connection with any trust agreement or indenture securing the bonds are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity. The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of IPEP remain unchanged despite the transfer of the powers,**



duties, agreements, and liabilities of IPEP to the domestic mutual insurance company into which IPEP has transformed as the successor entity.

Sec. 6. (a) Subdivisions (b)(1) through (b)(5) apply on the latter of the following dates:

- (1) January 1, 2016.**
- (2) The date on which IPEP begins transacting the business of insurance as a domestic mutual insurance company under section 5(a) of this chapter.**
- (b) The following apply on the date specified in subsection (a):**
 - (1) All powers, duties, agreements, and liabilities of the political subdivision risk management commission are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity.**
 - (2) All records and property of the political subdivision risk management commission, including appropriations and other funds under the control or supervision of the political subdivision risk management commission, are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity.**
 - (3) Any amounts owed to the political subdivision risk management commission are considered to be owed to the domestic mutual insurance company into which IPEP has transformed as the successor entity.**
 - (4) A reference to the political subdivision risk management commission in a statute, rule, or other document is considered a reference to the domestic insurance company into which IPEP has transformed as the successor entity.**
 - (5) All powers, duties, agreements, and liabilities of the political subdivision risk management commission with respect to bonds issued by the political subdivision risk management commission in connection with any trust agreement or indenture securing the bonds are transferred to the domestic mutual insurance company into which IPEP has transformed as the successor entity. The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of the political subdivision risk management commission remain unchanged despite the transfer of the powers, duties, agreements, and liabilities of the political subdivision risk management commission to the domestic mutual insurance company into which IPEP has transformed as the successor entity.**



(c) For the purposes of IC 27-1-29-29, IC 27-1-29.1-23, this section, section 7 of this chapter, and IC 34-13-3-8, the insurance commissioner shall certify the date on which:

- (1) IPEP begins transacting the business of insurance as a domestic mutual insurance company under section 5(a) of this chapter; and
- (2) the powers, rights, duties, assets, and obligations of the political subdivision risk management commission are transferred under this section to the domestic mutual insurance company into which IPEP has transformed.

Sec. 7. The auditor of state shall, not before January 1, 2016, and not later than thirty (30) days after the date certified by the insurance commissioner under section 6(c) of this chapter, transfer the balance of funds in:

- (1) the political subdivision risk management fund established by IC 27-1-29-10 (before its expiration); and
- (2) the political subdivision risk management catastrophic fund established by IC 27-1-29.1-7 (before its expiration);

to the domestic mutual insurance company into which IPEP has transformed under this chapter.

SECTION 7. IC 27-6-4-1 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 1: Nothing in IC 27-6-6-3, IC 27-6-6-6, or IC 27-6-6-7 shall be construed to annul, restrict, or in any manner interfere with the licensing and supervision of mutual insurance associations and reciprocal associations formed and operating on or before January 1, 1991, solely for the writing of worker's compensation insurance as provided under IC 22-3.~~

SECTION 8. IC 27-7-2-26 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 26: Nothing in this chapter shall be construed to annul, restrict, or in any manner interfere with the licensing and supervision of mutual insurance associations and reciprocal associations formed and operating on or before January 1, 1991, solely for the writing of worker's compensation insurance as provided under IC 22-3-2 through IC 22-3-6.~~

SECTION 9. IC 27-8-8-2, AS AMENDED BY P.L.276-2013, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Account" means one (1) of the two (2) accounts created under section 3 of this chapter.

(c) "Annuity contract", except as provided in section 2.3(e) of this chapter, includes:



- (1) a guaranteed investment contract;
- (2) a deposit administration contract;
- (3) a structured settlement annuity;
- (4) an annuity issued to or in connection with a government lottery; and
- (5) an immediate or a deferred annuity contract.

(d) "Assessment base year" means, for an impaired insurer or insolvent insurer, the most recent calendar year for which required premium information is available preceding the calendar year during which the impaired insurer's or insolvent insurer's coverage date occurs.

(e) "Association", except when the context otherwise requires, means the Indiana life and health insurance guaranty association created by section 3 of this chapter.

(f) "Benefit plan" means a specific plan, fund, or program that is established or maintained by an employer or an employee organization, or both, that:

- (1) provides retirement income to employees; or
- (2) results in a deferral of income by employees for a period extending to or beyond the termination of employment.

(g) "Board" refers to the board of directors of the association selected under IC 27-8-8-4.

(h) "Called", when used in the context of assessments, means that notice has been issued by the association to member insurers requiring the member insurers to pay, within a time frame set forth in the notice, an assessment that has been authorized by the board.

(i) "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(j) "Contractual obligation" means an enforceable obligation under a covered policy for which and to the extent that coverage is provided under section 2.3 of this chapter.

(k) "Coverage date" means, with respect to a member insurer, the date on which the earlier of the following occurs:

- (1) The member insurer becomes an insolvent insurer.
- (2) The association determines that the association will provide coverage under section 5(a) of this chapter with respect to the member insurer.

(l) "Covered policy" means a:

- (1) nongroup policy or contract;
- (2) certificate under a group policy or contract; or
- (3) part of a policy, contract, or certificate described in subdivisions (1) and (2);



for which coverage is provided under section 2.3 of this chapter.

(m) "Extracontractual claims" includes claims that relate to bad faith in the payment of claims, punitive or exemplary damages, or attorney's fees and costs.

(n) "Funding agreement" has the meaning set forth in IC 27-1-12.7-1.

(o) "Impaired insurer" means a member insurer that is:

- (1) not an insolvent insurer; and
- (2) placed under an order of rehabilitation or conservation by a court with jurisdiction.

(p) "Insolvent insurer" means a member insurer that is placed under an order of liquidation with a finding of insolvency by a court with jurisdiction.

(q) "Member insurer" means any person that holds a certificate of authority to transact in Indiana any kind of insurance for which coverage is provided under section 2.3 of this chapter. The term includes an insurer whose certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily withdrawn but does not include the following:

- (1) A for-profit or nonprofit hospital or medical service organization.
- (2) A health maintenance organization under IC 27-13.
- (3) A fraternal benefit society under IC 27-11.
- (4) The Indiana Comprehensive Health Insurance Association or any other mandatory state pooling plan or arrangement.
- (5) An assessment company or another person that operates on an assessment plan (as defined in IC 27-1-2-3(y)).
- (6) An interinsurance or reciprocal exchange authorized by IC 27-6-6.
- (7) A prepaid limited service health maintenance organization or a limited service health maintenance organization under IC 27-13-34.
- (8) A farm mutual insurance company under IC 27-5.1.
- (9) A person operating as a Lloyds under IC 27-7-1.
- (10) The political subdivision risk management fund established by IC 27-1-29-10 **(before its expiration)** and the political subdivision catastrophic liability fund established by IC 27-1-29.1-7 **(before its expiration)**.
- (11) The small employer health reinsurance board established by IC 27-8-15.5-5.
- (12) A person similar to any person described in subdivisions (1) through (11).



(r) "Moody's Corporate Bond Yield Average" means:

- (1) the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;
- or
- (2) if the monthly average described in subdivision (1) is no longer published, an alternative publication of interest rates or yields determined appropriate by the association.

(s) "Multiple employer welfare arrangement" has the meaning set forth in IC 27-1-34-1.

(t) "Owner" means the person:

- (1) identified as the legal owner of a policy or contract according to the terms of the policy or contract; or
- (2) otherwise vested with legal title to a policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer.

The term does not include a person with a mere beneficial interest in a policy or contract.

(u) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a governmental entity, a voluntary organization, a trust, a trustee, or another business entity or organization.

(v) "Plan sponsor" refers to only one (1) of the following with respect to a benefit plan:

- (1) The employer, in the case of a benefit plan established or maintained by a single employer.
- (2) The holding company or controlling affiliate, in the case of a benefit plan established or maintained by affiliated companies comprising a consolidated corporation.
- (3) The employee organization, in the case of a benefit plan established or maintained by an employee organization.
- (4) In a case of a benefit plan established or maintained:
 - (A) by two (2) or more employers;
 - (B) by two (2) or more employee organizations; or
 - (C) jointly by one (1) or more employers and one (1) or more employee organizations;

and that is not of a type described in subdivision (2), the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the benefit plan.

(w) "Premiums" means amounts, deposits, and considerations received on covered policies, less returned premiums, returned



deposits, returned considerations, dividends, and experience credits. The term does not include the following:

(1) Amounts, deposits, and considerations received for policies or contracts or parts of policies or contracts for which coverage is not provided under section 2.3(d) of this chapter, as qualified by section 2.3(e) of this chapter, except that an assessable premium must not be reduced on account of the limitations set forth in section 2.3(e)(3), 2.3(e)(15), or 2.3(f)(2) of this chapter.

(2) Premiums in excess of five million dollars (\$5,000,000) on an unallocated annuity contract not issued or not connected with a governmental benefit plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code.

(x) "Principal place of business" refers to the single state in which individuals who establish policy for the direction, control, and coordination of the operations of an entity as a whole primarily exercise the direction, control, and coordination, as determined by the association in the association's reasonable judgment by considering the following factors:

(1) The state in which the primary executive and administrative headquarters of the entity is located.

(2) The state in which the principal office of the chief executive officer of the entity is located.

(3) The state in which the board of directors or similar governing person of the entity conducts the majority of the board of directors' or governing person's meetings.

(4) The state in which the executive or management committee of the board of directors or similar governing person of the entity conducts the majority of the committee's meetings.

(5) The state from which the management of the overall operations of the entity is directed.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are employed in a single state, that state is considered to be the principal place of business of the plan sponsor. The principal place of business of a plan sponsor of a benefit plan described in subsection (v)(4), if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are not employed in a single state, is considered to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the benefit plan and, in the absence of a specific or clear designation of a principal place of business, is considered to be the principal place of business of the employer or employee organization



that has the largest investment in the benefit plan in question on the coverage date.

(y) "Receivership court" refers to the court in an insolvent insurer's or impaired insurer's state that has jurisdiction over the conservation, rehabilitation, or liquidation of the insolvent insurer or impaired insurer.

(z) "Resident" means the following:

(1) An individual who resides in Indiana on the applicable coverage date.

(2) A person that is not an individual and has the person's principal place of business in Indiana on the applicable coverage date.

(aa) "State" includes a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(bb) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(cc) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

(dd) "Unallocated annuity contract" means an annuity contract or group annuity certificate:

(1) the owner of which is not a natural person; and

(2) that does not identify at least one (1) specific natural person as an annuitant;

except to the extent of any annuity benefits guaranteed to a natural person by an insurer under the contract or certificate. For purposes of this chapter, an unallocated annuity contract shall not be considered a group policy or group contract.

SECTION 10. IC 34-13-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) Except as provided in section 9 of this chapter **and subsection (b), for a loss arising from an act or omission occurring before the date certified by the insurance commissioner under IC 27-1-45-6(c)**, a claim against a political subdivision is barred unless notice is filed with:

(1) the governing body of that political subdivision; and

(2) the Indiana political subdivision risk management commission created under IC 27-1-29 **(before its expiration)**;

within one hundred eighty (180) days after the loss occurs.

(b) For a loss arising from an act or omission occurring before the date certified by the insurance commissioner under



IC 27-1-45-6(c), a claim against a political subdivision is not barred for failure to file notice with the Indiana political subdivision risk management commission created under IC 27-1-29-5 **(before its expiration)** if the political subdivision was not a member of the political subdivision risk management fund established under IC 27-1-29-10 **(before its expiration)** at the time the act or omission took place.

(c) Except as provided in section 9 of this chapter and subsection (d), for a loss arising from an act or omission occurring on or after the date certified by the insurance commissioner under IC 27-1-45-6(c), a claim against a political subdivision is barred unless notice is filed with:

- (1) the governing body of that political subdivision; and**
- (2) the domestic mutual insurance company to which the powers, rights, duties, assets, and obligations of the political subdivision risk management commission are transferred under IC 27-1-45;**

within one hundred eighty (180) days after the loss occurs.

(d) For a loss arising from an act or omission occurring on or after the date certified by the insurance commissioner under IC 27-1-45-6(c), a claim against a political subdivision is not barred for failure to file notice with the domestic mutual insurance company referred to in subsection (c)(2) if the political subdivision was not insured by that domestic mutual insurance company when the act or omission took place."

Delete pages 2 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1298 as introduced.)

CARBAUGH

Committee Vote: yeas 11, nays 0.

